

Honorable Richard A. Jones
Honorable J. Richard Creatura

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IAN SIMMERS,

Plaintiff,

v.

KING COUNTY, *et al.*,

Defendants.

No. 2:21-cv-00100-RAJ-JRC

DEPUTIES' OBJECTION TO REPORT
AND RECOMMENDATION

Note on Motion Calendar: July 30, 2021

The individual Deputies object to Magistrate Judge Creatura's Report and Recommendation denying their motion for judgment on the pleadings. Mr. Simmers hasn't pleaded plausible claims against any of the Deputies, and the Deputies are entitled to qualified immunity. Additionally, the Deputies join King County's objections to the Report and Recommendation (Dkt. 57).

Group pleading isn't sufficient to state a plausible claim against the Deputies.

A Rule 12(c) motion for judgment on the pleadings is evaluated under the same standard as a Rule 12(b)(6) motion to dismiss. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989) (timing is different, but "the motions are functionally

1 identical"). Under Rule 12, dismissal of claims can be based on "the lack of a cognizable
2 legal theory or the absence of sufficient facts alleged under a cognizable legal theory."
3 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

4 Under Rule 8(a)(2), a complaint must contain a "short and plain statement of the
5 claim showing the pleader is entitled to relief." A complaint does not satisfy this pleading
6 standard if it contains only "labels and conclusions" or a "formulaic recitation of the
7 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

8 To satisfy Rule 8 and survive a motion to dismiss, "a complaint must contain
9 sufficient factual matter accepted as true to 'state a claim to relief that is plausible on its
10 face.'" *Id.* at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A
11 claim has facial plausibility only "when the plaintiff pleads factual content that allows the
12 court to draw the reasonable inference that the defendant is liable for the misconduct
13 alleged." *Iqbal*, 556 U.S. at 678.

14 A court should apply a two-step approach when evaluating whether claims have
15 been adequately pleaded. *Id.* at 679. First, the court should identify and disregard all
16 legal conclusions and other conclusory statements, which are not entitled to an
17 assumption of truth. *Id.* Second, the court should determine whether well-pleaded,
18 factual allegations, which are entitled to an assumption of truth, "plausibly give rise to an
19 entitlement to relief." *Id.*

20 Mr. Simmers' generic group pleading about "the Police Officer Defendants"
21 doesn't satisfy *Iqbal* and *Twombly*'s pleading requirements. *Keates v. Koile*, 883 F.3d
22 1228 (9th Cir. 2018)—the case relied on by the Magistrate Judge—doesn't support such
23 a broad proposition either. That case involved a constitutional challenge to Child

1 Protective Services' removal of a child from her mother's custody. *Id.* at 1232. The
2 circumstances under which a temporary-custody notice ("TCN") was issued, which
3 allowed for removal of the child, were central to the alleged constitutional violations. *Id.*
4 at 1242.

5 The Ninth Circuit held that individually named "defendants cannot be held liable
6 for a constitutional violation under 42 U.S.C. § 1983 unless they were integral
7 participants in the unlawful conduct." *Id.* at 1241. So allegations that two CPS
8 employees collaborated in issuing the TCN and spoke to a hospital employee who told
9 the child's mother that the child couldn't go home were "just barely" sufficient to
10 plausibly allege that the CPS employees were integral participants in the claimed rights
11 violations. *Id.* at 1242. On the other hand, the Ninth Circuit concluded that the Complaint
12 did not state plausible allegations against several other defendants, including two
13 individuals against whom the complaint failed to "make any specific allegations." *Id.*

14 Here, the allegations against the Deputies fall into the second *Keates* category—
15 the Complaint does not plead any specific facts from which it can be plausibly inferred
16 that any of the Deputies participated in Mr. Simmers' interrogation or the murder
17 investigation, much less that the Deputies were "integral participants" in any alleged
18 violation of his rights.

19 Under *Iqbal* and *Twombly*, the Court must disregard Mr. Simmers' generic
20 allegations that "the Police Officer Defendants" violated his rights. These and similar
21 allegations are legal conclusions, not allegations of fact. Indeed, each is a classic
22 example of an "unadorned, the-defendant-unlawfully-harmed-me accusation" that must
23 be disregarded when assessing the adequacy of pleadings. *Iqbal*, 556 U.S. at 678.

1 The remaining allegations do not state a plausible claim against any of the
2 Deputies. In fact, the Complaint does not allege any specific act or omission by any of
3 them. Captains Baxter and Raftis are mentioned only four times in the Complaint. Their
4 names appear in the caption; in the preamble on the first page; in paragraph 31, which
5 alleges only that “the Bothell PD Officers agreed to seek the prosecution of Plaintiff with
6 officers from the King County Sheriff’s Office”; and in the prayer for relief at page 28.
7 Major McSwain’s name appears in the same four places plus paragraph 14, which
8 alleges that he was a “detective sergeant[] with the King County Police, now called the
9 King County Sheriff’s Department.”

10 Therefore, Mr. Simmers has not satisfied the basic requirement that in “§ 1983
11 suits, a plaintiff must plead that each Government-official defendant, through the
12 official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.
13 The Complaint does not set forth specific facts regarding the Deputies from which it can
14 plausibly be inferred that the Deputies were integral participants in violating his rights.

15 Unless Mr. Simmers cures this deficiency by amending his Complaint to allege
16 specific acts or omissions by individual Deputies, his claims must be dismissed. Of
17 course, Mr. Simmers need not be given an opportunity to amend his Complaint for any
18 claims dismissed on the grounds raised in King County’s motion. Leave to amend may
19 be denied if the proposed amendment would be futile or subject to dismissal. *Wheeler v.*
20 *City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018).

21 **The Deputies are entitled to qualified immunity.**

22 Qualified immunity is an additional, independent basis for dismissal of Mr.
23 Simmers’ claims against the Deputies. Police officers are entitled to immunity from civil

1 liability when their conduct doesn't violate clearly established law. *Pearson v. Callahan*,
2 555 U.S. 223, 243–44 (2009). And whether a right was clearly established must be
3 determined "in light of the specific context of the case, not as a broad general
4 proposition." *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part on other*
5 *grounds by Pearson*, 555 U.S. at 236.

6 The Deputies are entitled to qualified immunity based on Mr. Simmers' own
7 admissions. When moving to vacate his conviction, Mr. Simmers represented to the
8 Superior Court that, at the time of his interrogation, "few if any police officers
9 contemplated that standard psychological interrogation tactics, especially when used on
10 youthful suspects, could produce false confessions." (Dkt. 30 at 762.) Mr. Simmers'
11 concession that his interrogation involved techniques that were considered "standard" at
12 the time constitutes an admission that none of the Deputies knowingly violated any
13 clearly established law in 1995. Under these circumstances, qualified immunity applies
14 because it protects "all but the plainly incompetent or those who knowingly violate the
15 law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

16 Based on the refusal to take judicial notice of the truth of facts found within
17 pleadings and the refusal to apply judicial estoppel, the Magistrate Judge also
18 recommended against applying qualified immunity. However, these are independent
19 issues. Mr. Simmers' statement regarding interrogation techniques is an admission of a
20 party opponent, not a disputed fact. Nor is the Court required to apply judicial estoppel
21 to recognize the commonsense proposition that if well-trained officers considered their
22 tactics "standard" rather than unlawful, qualified immunity applies. This is a second
23 reason the claims against the Deputies should be dismissed.

1 DATED: July 26, 2021

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CERTIFICATE OF SERVICE

I certify that on the date below I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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I further certify that on the date below I mailed by U.S. Postal Service a copy of the foregoing document to the following non-CM/ECF participants:

N/A

DATED: July 26, 2021

s/Nikki Carsley

Nikki Carsley